Supreme Court, U.S.
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No. 95-2090

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

LARRY FIELDS, Director, DAN REYNOLDS, Warden of Oklahoma State Penitentiary; CALVINO S. MUSE, Chairman of the Board of Corrections; HUGH REED; WILLIAM EVANS; PHIL DESSAUER; JOE R. MANNING, JR.; GREGORY H. HALL; and DANIEL BINTZ; ALL MEMBERS OF THE OKLAHOMA BOARD OF CORRECTIONS, Oklahoma Board of Corrections,

Petitioners,

v.

BOBBY BATTLE, *et al.*,

Respondents,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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36 pp

QUESTIONS PRESENTED

1. In a twenty-four year "structural injunction" suit over prison conditions, does a 1982 finding that prison system is constitutional and a subsequent finding that there is no reasonable likelihood of continued unconstitutional violations deprive federal courts of authority to enforce remedial compliance orders and injunctions left in effect after dismissal?

2. In a twenty-four year "structural injunction" suit over prison conditions, does the newly enacted Prison Litigation Reform Act of 1965 mandate termination of all prospective injunctive relief where there has been a finding of constitutionality since 1982?

LIST OF PARTIES

The parties to this proceeding on *Petition for Writ of Certiorari* are:

Petitioners:

(Defendants in the District Court and Appellees in the United States Court of Appeals for the Tenth Circuit):

LARRY FIELDS
DAN REYNOLDS
CALVINO S. MUSE
HUGH REED
WILLIAM EVANS
PHIL DESSAUER
JOE R. MANNING, JR.
GREGORY H. HALL and
DANIEL BINTZ

Respondents:

(Plaintiffs in the District Court and Appellants in the United States Court of Appeals for the Tenth Circuit):

Bobby Battle, et al.

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PRELIMINARY STATEMENT

The case presents the Court with the opportunity to define when federal courts must return control of state prison systems to state officials and in the process end a twenty-four year old lawsuit which has lost its reason for existing. The litigation lives on in the form of out-dated compliance orders and injunctions against a state prison system. The injunctions' requirements exceed constitutional standards. Both the United States District Court for the Eastern District of Oklahoma and the United States Court of Appeals for the Tenth Circuit determined by 1982 that the Oklahoma prison system met constitutional standards. The Tenth Circuit refuses to return control to state officials, in direct conflict with decisions of this Court.

According to this Court's decisions, the appellate court's and district court's findings that the system is operating constitutionally should have deprived the district court of power to enforce the injunctions, and the injunction should have been dissolved. In addition, the Prison Litigation Reform Act of 1996 (PLRA) Pub.L. No. 104-134, 110 Stat. 1321, prohibits prospective relief against prisons unless the prospective relief enjoins unconstitutional actions. Under the newly enacted PLRA, if conditions become constitutional, injunctions must terminate. Although this court's decisions indicate that the injunction in the instant case should dissolve and the Prison Litigation Reform Act dictates that the injunction must terminate, the Tenth Circuit's Opinion and Judgment directs the district court to hold an evidentiary hearing on the possible dissolution of the injunctions and on Plaintiffs' attempt to enforce (via Rule 70 Fed. R. Civ. P. contempt proceedings) compliance orders

and injunctions. The circuit court's instruction unnecessarily perpetuates pointless post-dismissal litigation.

Implicit in the Tenth Circuit's Opinion and Judgment is the unfounded conclusion that, because the Plaintiff class asserts new allegations, the seventeen-year-old injunctions must persevere, even though the system has been determined constitutional since 1982.

This case is important because unwarranted perpetuation of the injunction directly contradicts this Court's principle that the federal judiciary's supervision of state public institutions must end and control must be returned to the officials of the public institution. The Tenth Circuit's failure to recognize that the district court has no power to continue to enforce post-dismissal injunctions is resulting in an unnecessary enforcement of archaic compliance orders and injunctions.

OPINION BELOW

The Opinion and Judgment of the United States Court of Appeals is dated March 29, 1996, and is issued as an unpublished opinion, Opinion and Judgment, Nos. 95-7164 and 96- 7013, cons. March 29, 1996. Appendix A. The panel decision reversed the United States District Court for the Eastern District of Oklahoma's decision to dissolve the old compliance orders and injunctions. The district court decision is unreported. Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Tenth Circuit was entered March 29, 1996. Petitioners invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1) permitting review "[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree[.]" This Petition for Writ of Certiorari is timely filed within 90 days of March 29, 1996.

STATUTORY AND CONSTITUTIONAL PROVISIONS

United States Code, Title 42:
§ 1983. Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and las, shall be liable to the party injured in an action at law, suit or equity, or other proper proceeding for redress. For the purposes of this section, and Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

Amendment VIII Constitution of the United States:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United Stats and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 18 U.S.C. § 3626(A)(1) provides as follows:

(A) REQUIREMENTS FOR RELIEF.

(1) PROSPECTIVE RELIEF. (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial wright to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(b) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

STATEMENT OF THE CASE

Former Oklahoma inmate Bobby Battle filed a 42 U.S.C.A. § 1983 lawsuit, appearing pro se, in 1972. Battle's complaint challenged the conditions of confinement in the Oklahoma prison system. Plaintiff acquired public interest lawyers and gained class certification. Eventually, Oklahoma State officials presented the trial court with a plan to alleviate alleged constitutional deficiencies. Plaintiffs objected, but the court accepted the plan.

In 1982, the district court decided that the system was complying with constitutional requirements. A panel of the Tenth Circuit affirmed the finding that the system met constitutional standards. Battle v. Anderson, 708 F.2d 1523, 1537 (10th Cir. 1983), cert. dis. 465 U.S. 1014, 104 S.Ct.

1019. The court, however, decided that the district court should continue to exercise supervisory power until it found that there was no reasonable expectation that unconstitutional practices would recur. Battle v. Anderson, 708 F.2d at 1538.

In 1983, the district court dismissed the entire case, holding that there was no reasonable expectation that unconstitutional practice would recur. Memorandum Opinion and Order, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception,[1] Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986). The Tenth Circuit affirmed the district court's decision to dismiss the underlying causes of action, but retained those injunctions and orders protecting constitutional violations. Id. at 1429 (emphasis added).

In 1995, the district court, recognizing that the Department had met the appropriate standards for dissolution of the out-dated injunction, notified parties of the opportunity to present argument regarding the dismissal of the injunctions. Comprehending that the injunction prohibited only behavior which violated **constitutional** requirements, the district court specified that the altered

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[1] The circuit court determined that the record did not contain sufficient findings and conclusions to show compliance on the racial discrimination claim. Battle v. Anderson, 788 F.2d at 1423.

Eighth Amendment standard[2] affected the grounds for the injunction. On September 21, 1995, the district court notified the parties of their opportunity to be heard regarding the possible dissolution of the antiquated injunctions. The parties then presented their arguments to the court. In addition, Plaintiffs filed motions to enforce compliance based on totally new allegations.

The district court considered the parties' positions regarding the possible dissolution of the injunctions. The trial court also considered the prior findings that the prison system was meeting constitutional standards as well as this Court's recent decisions regarding Eighth Amendment standards. After no party presented persuasive argument against dissolution, the district court properly dissolved the injunctions.

On appeal, the circuit court remanded the case. That court directed the district court to hold an evidentiary hearing to determine whether the new Eighth Amendment standard destroyed the grounds for the old injunctions and to hear Plaintiffs' motions regarding non-compliance issues.

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[2] This Court's decisions in Wilson v. Seiter 501 U.S. 294 (1991), and Farmer v. Brennan, ____ U.S. ____, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) modified the prior standard required to show an Eighth Amendment violation. In addition to showing that a defendant's behavior objectively violated the cruel and unusual punishment clause, these cases require the plaintiff to show that a defendant possessed a culpable state of mind.

I. THE TENTH CIRCUIT'S INSTRUCTION TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING IS EXTRA-JURISDICTIONAL AND IS AGAINST THIS COURT'S DECISIONS.

In Missouri v. Jenkins, ____ U.S. ____, 115 S.Ct. 2038, 132 L.Ed.2d 63 (1995), this Court again acknowledged the limitations in the duration and scope of the federal judiciary's supervision of state institutions. The Court reviewed a long-standing injunction against a Kansas City public school district and determined that the district court's order directing the school district to grant interdistrict pay raises to correct intradistrict racial segregation was outside the scope of the injunction. Relying on Board of Ed. of Oklahoma City Publ. Schools v. Dowell, 498 U.SD. 237 (1991), Freeman , 503 U.S. 467 (1992) and Milliken, 433 U.S. 267 (1977) this Court held that federal supervision of the institution was intended as a temporary measure to remedy past discrimination. Missouri v. Jenkins, 132 L.Ed.2d at 80, citing Dowell, 498 U.S. at 247. As the Court explained, the aim of federal injunctions against public institutions is the eventual restoration of "state and local authorities to the control of a[n] [institution] that is operating in compliance with the Constitution." Missouri v. Jenkins, 132 L.Ed.2d at 81, quoting Freeman, 503 U.S. at 489. The Court further stated that federal court decrees which endeavor to eliminate conditions which are not violative of the Constitution exceed the appropriate limits. Missouri v. Jenkins, 132 L.Ed.2d at 86, quoting Milliken 433 U.S. at 282.

As this Court stated in Insurance Corporation of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee:

> Subject matter jurisdiction . . . is an Art. III as well as statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign.

456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

The long-standing Battle compliance orders and injunctions, like the injunctions in Jenkins, must be limited in scope and duration. The district court was correct in acknowledging the return of control to state officials. The circuit court's remand of the case and instruction to the district court to hold an evidentiary hearing went beyond the subject matter jurisdiction and was extra-jurisdictional.

A. Once the District Court and the Appellate Court Found That the Oklahoma Prison System Met Constitutional Standards, the District Court Had No Jurisdiction to Enforce the Out-dated Injunctions and Properly Dissolved Them.

Federal courts have the authority to enjoin only actions which violate constitutional standards. Missouri v. Jenkins, 132 L.Ed.2d at 86. The supervising court must strive to restore control of an institution operating in compliance with the Constitution to the proper officials. Id.

at 81. A review of this case reveals that both the district court and the appellate court have determined that the prison system is constitutional. Following the district court's 1982 decision that the system was constitutional, a panel of the Tenth Circuit determined that the system met constitutional standards. The panel stated, "...we...agree that present conditions, as described by the district court appear constitutionally adequate under the standards set forth in Rhodes[3]." Battle v. Anderson, 708 F.2d at 1537 (10th Cir. 1983). Thus by 1983, even the circuit court found that all the conditions in the Oklahoma prison system were constitutional.

In December of 1983, the district court dismissed the case. Memorandum Opinion and Order, No. 72-95-C, December 30, 1983. On appeal, the Tenth Circuit affirmed, with one exception.[4] Battle v. Anderson, 788 F.2d 1421 (10th Cir. 1986). The rub is that, the Tenth Circuit also affirmed the district court's decision to leave in effect those injunctions **against constitutional violations.** Id. at 1429 (emphasis added).

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[3] Rhodes v. Chapman, 452 U.S. 337 (1981).

[4] The Tenth Circuit's 1983 decision affirmed the district court's 1982 decision that the prison system was constitutional and therefore established that constitutionality as the law of the case. However, even under the appellate court's 1986 finding that system was constitutional on all claims including the racial discrimination claim. The circuit did not think the record sufficient to show likelihood of continued compliance on the racial discrimination claim.

The findings of the district court in 1982 and 1983 as well as the findings of the Tenth Circuit in 1983 and 1986 repeatedly established that the prison system was meeting constitutional standards. The decisions that no constitutional violations existed unquestionably met the Missouri v. Jenkins "ultimate inquiry" for dissolving injunctions against institutions: the judicial determinations that the unconstitutional practices had ceased demonstrated the Department's good faith compliance with the injunction and indicated that the past unconstitutional practices had been eliminated to the extent practicable. Missouri v. Jenkins, 132 L.Ed.2d at 81. In accordance with the decisions of the district court and the Tenth Circuit and with this Court's decision in Missouri v. Jenkins, **the district court has no jurisdiction to revisit and enforce the old compliance orders.**

B. Once the district court properly dissolved the injunctions, the Tenth Circuit's order directing an evidentiary hearing was extra-jurisdictional.

The circuit court's requirement that the district court hold an evidentiary hearing following the district court's appropriate dissolution of the injunction was outside the scope of the court's Article III powers and unnecessarily perpetuated the out-dated federal court intervention. The appellate court directed the district court to hear evidence on Plaintiffs' motions to enforce compliance orders and injunctions and the dissolution issues. However, the instruction to hear evidence on these issues was inappropriate.

1. The district court gave up its jurisdiction in 1983 to decide new allegations and therefore cannot hold an evidentiary hearing on Plaintiffs' most recent motions consisting of new factual allegations.

The circuit court remanded the case not only for the district court to determine whether the injunctions should be dissolved but also for the court to hold an evidentiary hearing on Plaintiff's motions to enforce the injunctions. Plaintiffs' motions, however, are based on absolutely new factual allegations. Plaintiffs seek to relitigate compliance issues lost in 1982.

The district court has no jurisdiction to hear the newly created compliance allegations. In 1986, the circuit court affirmed the district court's dismissal of all causes of action except racial discrimination. The appellate court explicitly found that the lower court's dismissal of the Eighth Amendment claim was without error. Battle v. Anderson, 788 F.2d at 1428-29. That Opinion left the district court, if anything, only with the authority to consider compliance issues surrounding the racial discrimination allegations. Id. at 1429.

The circuit court seems to have, at least in part, recognized its self-created dilemma. The court stated:

> Obviously, [the evidentiary] hearing will be limited to the issues raised by the parties' filings and cannot be used

> by the plaintiffs to expand the present case or, in effect, bring a new action.

Battle v. Fields, Order and Judgment, Nos. 95-7164 and 96-7013, cons., March 29, 1996.

The circuit half-recognized that the district court cannot hear new allegations at this late date. However, it improperly remanded the case for the district court to hear the new Eighth Amendment allegations introduced in Plaintiffs' motion. The district court no longer has jurisdiction to hear the new allegations, and the district court's consideration of the allegations would permit the Plaintiffs' to improperly initiate new causes of action in this twenty-four-year-old litigation. Therefore, the circuit court's order that the district court hold an evidentiary hearing on Plaintiffs' motion was improper.

II. THE PRISON LITIGATION REFORM ACT MANDATES THAT THE INJUNCTIONS IN THIS CASE BE TERMINATED.

On April 26, 1996, the President signed into effect the Prison Litigation Reform Act (PLRA). Section 802 of Title VIII, entitled "Appropriate Remedies for Prison Conditions," amends 18 U.S.C. § 3626. The clear intent of Congress as stated in § 802(b)(1) of the PLRA is that the amended § 3626 "shall apply with respect to all prospective

relief[5] [in any civil action with respect to prison conditions] whether such relief was originally granted or approved before, on, or after the date of the enactment of this title."

Title 18 U.S.C. § 3626(b)(2) provides as follows:

(b) TERMINATION OF RELIEF

(2) IMMEDIATE TERMINATION OF PROSPECTIVE RELIEF. In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

Pursuant to the PLRA, the "orders and injunctions" in this cased relating to prospective relief (i.e., continued compliance with the injunction) should be terminated. The PLRA requires that all prospective relief terminate unless the trial court has issued findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of a federal right, and is the least intrusive means necessary to correct the violation. The district court did not, and cannot, make those findings. Therefore, no case or

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[5] "Prospective relief" is defined in § 3626(g)(7) as "all relief other than compensatory monetary damages."

controversy exists at this time. If a case is no longer justiciable, the case may be resolved at any time, even during this Court's review of a petition for certiorari. Roe v. Wade, 410 U.S. 113, 125 (1973).

A. The 1979 Order approving Defendants' plan does not contain the required PLRA findings.

According to § 3626(b)(2) of the PLRA, the trial court granting prospective relief must make specific findings that the relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means necessary to correct the violation of the Federal right. Absent such findings, § 3626(b)(2) provides that a defendant is entitled to "the immediate termination of any prospective relief."

It cannot reasonably be suggested that the 1979 Order approving the Defendants' plan contains the findings now required by § 3626(b)(2). Even assuming that the 1979 Order ever met the PLRA's requirements, the district court and appellate court have determined that the prison system meets constitutional standards. The current injunction does not meet the statutory requirement that the relief ordered is to extend "no further than necessary to correct the federal right."

According to the district court and the Tenth Circuit, no violation of federal rights exists in this case. Federal supervision should end.

B. The prospective relief contained in the "orders and injunctions" is not "narrowly drawn" and is not the "least intrusive means" to correct violations of federal rights, as required by PLRA.

In the present case, the injunction cannot reasonably be described as extending no further than necessary to correct any violations presently identified. The law of the case in this litigation is that no violation of a federal right exists. As an example, the 1979 decree incorporated standards of the American Correctional Association as well as standards of the American Public Health Association and Life Safety Code. These standards represent goals of the Oklahoma Department of Corrections rather than minimum levels of operation necessary to satisfy the Constitution. See Bell v. Wolfish, 441 U.S. 520, 543-44, n. 27 (1979). The State's plan implementing standards such as these was not an effort to meet the constitutional minimum but was a reflection of state officials' quest "to do more than that which is minimally required by the Constitution [in order] to settle a case and avoid further litigation. . . ." Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 392 (1992).

The PLRA appears to mirror the limits established by this Court in grants of relief in institutional reform litigation. In this case, both the district court and the appellate court have found that the system is constitutional. Therefore, pursuant to the PLRA, the orders and injunctions in place must be terminated.

The instant orders and injunctions were not derived from a consent decree. Plans were instituted unilaterally by state officials. This matter has always been addressed to the limited authority of federal courts. The PLRA mandates an end to this case.

CONCLUSION

The Tenth Circuit's opinion directed the district court to take action it has no power or authority to take. The district court and the Circuit Court have already established that the system has met constitutional standards.

The parties cannot assert new allegations. Evidence is irrelevant in determining whether a changed legal standard affected the existing injunctions. The injunctions are detailed in the court record which covers twenty-four years of litigation. Therefore, no possible reason exists to present evidence.

The Tenth Circuit's order was contrary to this Court's limitation of perpetual institutional injunctions in Milliken, Freeman, Dowell, and Jenkins, and the orders and injunction therefore must be dissolved. In addition, pursuant to the PLRA, prospective relief must be terminated. Therefore, this Court should grant certiorari to review the Tenth Circuit's perpetuation of the antiquated compliance orders and injunctions against officials of the Oklahoma Department of Corrections.

Respectfully submitted,

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APPENDIX

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Appendix A

Text of Decision of the Tenth Circuit on the Merits.

> Bobby BATTLE, et al., Plaintiffs-Appellees, v. Larry FIELDS, Director Dan Reynolds, Warden of Oklahoma State Penitentiary; Calvino S. Muse, Chairman of the Board of Corrections; Hugh Reed, Williams Evans; Phil Dessauer; Joe R. Manning, Jr.; Gregory H. Hall; and Daniel Bintz; All Members of the Oklahoma Board of Corrections, Oklahoma Board of Corrections, Defendants-Appellee, United States of America, Plaintiff-Intervenor, Nos. 95-7164 and 95-7013

Appendix B

Text of an Order of the Tenth Circuit entered on Novembet 15, 1995.

> United States District Court, for the Eastern District of Oklahoma Bobby Battle, et al., Plaintiffs-Appellants, v. Park J. ANDERSON, et al., Defendants-Appellees. No. 72-095-C ORDER entered November 15, 1995

APPENDIX A

March 29, 1996

Bobby BATTLE, et al.,

Plaintiffs-Appellees

v.

Larry FIELDS, Director Dan Reynolds, Warden of Oklahoma State Penitentiary; Calvino S. Muse, Chairman of the Board of Corrections; Hugh Reed, Williams Evans; Phil Dessauer;Joe R. Manning, Jr.; Gregory H. Hall; and Daniel Bintz;All Members of the Oklahoma Board of Corrections, Oklahoma Board of Corrections

Defendants-Appellee

United States of America,

Plaintiff-Intervenor

Nos. 95-7164, 95-7013
United States Court of Appeals
Tenth Circuit
June 25, 1996

Appeal from the United States District Court
or the Eastern District of Oklahoma

Guy L. Hurst
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ANDERSON, TACHA AND EBEL, Circuit Judge

On October 28, 1994, the Plaintiffs filed a motion to enforce certain injunction previously entered in this case. On November 17, 1994, the district court issued an order denying the motion, and sua sponte dissolving the injunctions and dismissing the case, except for the Fourteenth Amendment segregation issue originally remanded by this court in 1986.

We subsequently vacated the district court's order and remanded the case with instructions to conduct an evidentiary hearing on the plaintiffs' motion and on the issue of dissolution. Battle v. Fields, No. 94-1715 (10th Cir. June 27, 1995), Appellants' App. Vol. III, Tab 18. The defendants thereafter filed a motion to terminate the case. The district court then directed the parties to present arguments in writing addressing the following question: "[W]hy shouldn't all of the existing injunctions be dissolved as a matter of law in light of . . . this Court's finding of compliance in 1983, and the Tenth Circuit affirming of that finding in 1986." Appellants' App. Vol. III, Tab 19, at 5-6. After the parties briefed that issue, the district court determined that "[t]o resolve this legal issue, . . . oral argument and an evidentiary hearing are unnecessary." Battle v. Anderson, No. 72-095-C, slip op. at 1 (E.D.) Okla. Nov. 15, 1995), Appellants' App. Vol. III, Tab 26. The court then proceeded to enter an order on November 15, 1995, readopting its previous conclusions and once again dissolving the injunctions and dismissing the case. With respect to the matter of an evidentiary hearing, the court reasoned as follows:

> If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated

> standards. It is conceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.
>
> ....
>
> If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. . . . [A]ny further evidentiary hearing without using present constitutional standards would be futile and encompass hours of necessary discovery and testimony.

Id. at 2-3.

At the plaintiffs' request, we stayed the district court's order pending appeal. The plaintiffs and the United States, as plaintiff-intervenor, filed separate notices of appeal, which we have consolidated.

As a threshold matter, we reject the argument advanced by the defendants that, in substance, this case was concluded in 1983. It is too late in the day in this litigation to dispute the existence and vitality of injunctions affecting the parties. Indeed, the district court's November 17, 1994, and November 15, 1995, orders specifically address the dissolution of such injunctions. Additionally, we have previously affirmed the district court's continuing jurisdiction over this litigation and have explicitly recognized the continuing viability of the injunctions entered by the court. See Battle v. Anderson, 788 F.2d 1421, 1428 n.5 (10th Cir. 1986) ("[I]t is unmistak[a]bly clear that the orders and injunctions protecting the inmates against constitutional violations. . . . remain in full force and effect."); Battle v. Anderson, 708 F.2d 1523, 1538-39 n.4 (10th Cir. 1983)("If

an injunction is to be effective, a court must retain continuing jurisdiction to enforce . . . the terms of its orders. The court cannot be divested of jurisdiction by temporary compliance with the injunction.")(citations omitted), cert dismissed, 465 U.S. 1014 (1984). And, as already indicated, most recently we remanded the case to the district court with express directions to hold a hearing on the plaintiffs' enforcement motion and on the potential dissolution of the injunctions. See Appellants' App. Vol. III, Tab 18, at 2.

Regarding the procedural posture of the case, we respectfully disagree with the district court's conclusion that changed legal standards make an evidentiary hearing futile and unnecessary. In a case like this the validity of the parties' allegations and the propriety of dissolving the injunctions and dismissing the case cannot be properly determined without an evidentiary hearing. See Battle, 708 F.2d at 1539 (The district court "is the only court equipped to test evidentiary compliance and the only forum in which to raise any allegations of continuing deficiencies.")(quoting Finney v. Arkansas Board of Corrections, 505 F.2d 194, 215 (8th Cir. 1974). To the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions. The resulting analysis and disposition by the court will be directed to a relevant factual record. The evidence, together with the findings and conclusions of the district court, will then provide the record necessary for appellate review. It is the absence of such a record that prompted our remand in the first place.

Accordingly, we again vacate the district court's order and remand this case for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion, filed since our last remand, to dissolve

the injunctions and dismiss the case. Cf. Battle v. Anderson, 594 F.2d 786, 789 (10th Cir. 1979)(remanding for further evidentiary hearings on defendants' compliance with court's prior orders). Obviously, the hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action. We of course express no opinion on the merits of the parties' motions or any other matter pending before the district court in this case.

Finally, we reluctantly conclude that on remand this case must be assigned to a new judge. The experienced district judge who has handled this case to date has done so with the utmost competence and professionalism. There is no question that the judge has and would continue to treat the parties with scrupulous fairness. however, the very basis for the court's order now on appeal is that an evidentiary hearing will be futile, and its conclusion is foregone. The appearance, not the fact, of bias arising from this reasoning would color future proceedings. The case may be reassigned on remand in accordance with the applicable local rules of the district court.

Accordingly, for the reasons stated above, the order of the district court is VACATED, and the case is REMANDED for further proceedings before a different judge.

ENTERED FOR THE COURT

Stephen H. Anderson

Circuit Judge

APPENDIX B

United States District Court,
for the Eastern District of Oklahoma

Bobby Battle, et al.,

Plaintiffs-Appellants,

v.

Park J. ANDERSON, et al.,

Defendants-Appellees.

No. 72-095-C

ORDER
Entered November 15, 1995.

Before The Honorable Frank H. Seay,
United States District Court

This matter is before the court pursuant to an order of the United States Court of appeals for the Tenth Circuit ("the Circuit Court") in Battle v. Fields, No. 94-7175 (10th Cir. June 27, 1995). In its order, the Circuit Court found that this court's order of November 17, 1994, denying plaintiffs' motion to enforce certain injunctions and dissolving all existing injunctions in the underlying case, should be vacated and remanded to this court to have a hearing to determine the issues raised by plaintiffs' motion[1] and to determine whether existing injunctions should be dissolved.

The parties have now had that opportunity to be heard on their respective positions, in that on September 21, 1995, the parties were given the opportunity, in fact, they were directed to file briefs on the issue of whether or not this court should dissolve the prior injunctions in this case as a matter of law. The parties filed briefs, and none requested oral argument. To resolve this legal issue, this court finds oral argument and an evidentiary hearing are unnecessary, and that the parties have been afforded due process. Dowell ex rel. Dowell v. Board of Educ., 8 F.3d 1501 (10th Cir. 1993); United States v. Colorado, 937 F.2d 505 (10th Cir. 1991).

In its order of November 17, 1994, this court found that the previously entered injunctions were archaic and did not embody current constitutional requirements as enunciated and defined by more recent supreme Court decisions, and the court dissolved those injunctions as a matter of law. See, Farmer v. Brennan, ____ U.S. _____, 114 S.Ct. 1970 (1994); Wilson v. Seiter, 501 U.S. 294 (1991). Plaintiffs have not

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[1] Plaintiffs conceded, before the Circuit Court and this court, that the only issue raised by plaintiffs in their original motion, i.e., overcrowding at the Lexington facility, has been resolved.

addressed the obvious question of why the previous injunctions issued by this court are necessary to maintain and enforce constitutional standards in light of recent Supreme Court decision setting modern constitutional standards for the operation of prisons. If this court conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards. It is inconceivable that such a hearing would be of any value, although it would indeed be time consuming and expensive.

This court notes, however, that other courses of action may be appropriate. As stated in this court's previous order, the class may urge recertification and new injunctions under current case law in a new lawsuit, or the circuit Court may agree with this court's finding that the issues raised by counsel are being addressed in a more efficient manner through individual prisoner §1983 petitions.

If this court is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw. In the unlikely event the Circuit Court directs additional evidentiary hearings on constitutionality, those hearings would be conducted within the parameters of the latest supreme Court decisions, and the additional facts and status of the prisoners would be measured by the current Supreme Court constitutional standards. If additional evidentiary hearings to determine constitutionality are required, a significant new issue would be whether or not the defendants have a defense based upon lack of intent due to a failure of the state legislature to appropriate funds or a "cost" defense. Wilson, 501 U.S. at 301-302. Because this is an open issue which has not been addressed by the supreme Court, any further evidentiary hearing without using present

constitutional standards would be futile and encompass hours of unnecessary discovery and testimony.

Since this court's order dissolving the prior injunctions, the plaintiffs have filed requests for injunctions, contempt and sanctions concerning the use of the condemned East cellhouses and alleged triple celling at the Mabel Basset Correctional Center. These issues, however, were not before the court at the time this court entered its order of November 17, 1994, dissolving the prior injunctions and ending its supervisory role over the Oklahoma Penal System.[2] Therefore, this court finds those requests for further injunctive relief to be premature until this court's order of November 17, 1994, and this order, dissolving the prior injunctions on which the plaintiffs' current requests for injunctive relief are based, have been resolved.

Accordingly, after notice to and briefing by the parties, this court adopts its findings and order of November 17, 1994, dissolving the prior injunctions entered herein, and dismissing this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit Court in 1986.

IT IS SO ORDERED this 15th day of November, 1995.

Entered for the Court

FRANK H. SEAY
UNITED STATES DISTRICT JUDGE

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[2] This court retains jurisdiction over the Fourteenth Amendment racial segregation issue.